

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

| | | |
|-----------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. 4:12-cr-025 |
| |) | |
| v. |) | |
| |) | |
| PAUL W. AUSTIN and CRAIG T. |) | DEFENDANT AUSTIN'S MOTION |
| MARTIN, |) | TO DISMISS |
| |) | |
| Defendants. |) | |
| |) | |

Defendant Paul W. Austin moves this Court for an Order dismissing the Indictment as against him. In support of his Motion, Mr. Austin states as follows:

1. Mr. Austin is charged with violating 16 U.S.C. §§ 742J-1(a)(2) and (a)(3), which prohibit “harassing” birds, fish, and animals with an aircraft, or participating in such harassment.

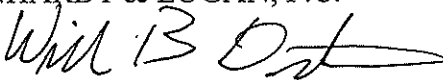
2. For two reasons, explained more fully in the Brief accompanying this Motion, the Court should dismiss the Indictment.

3. First, the statute that Mr. Austin is accused of violating is unconstitutionally vague. The key term – “harass” – does not provide fair or adequate notice of what conduct the statute proscribes. Further, its vagueness permits or even encourages arbitrary enforcement. The statute therefore does not comport with the Due Process Clause of the Fifth Amendment.

4. Second, Mr. Austin previously paid a "Violation Notice" alleging that he violated 36 C.F.R. § 327.4(c). *See* United States District Court for the Southern District of Iowa Violation No. 2294165. That charge arose from the same act or transaction as the instant charge. The regulatory offense, moreover, is the "same offense," for double jeopardy purposes, as the offense charged in the Indictment. This prosecution is therefore barred by the Double Jeopardy Clause of the Fifth Amendment.

WHEREFORE, for the foregoing reasons and those in the Mr. Austin's Brief accompanying this Motion, Mr. Austin respectfully requests that the Court dismiss the Indictment as against him.

WEINHARDT & LOGAN, P.C.

By 

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ATTORNEYS FOR PAUL W. AUSTIN

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on April 2, 2012, by

- | | |
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| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Electronic Mail |
| <input type="checkbox"/> FedEx/ Overnight Carrier | <input checked="" type="checkbox"/> CM / ECF |

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